IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 33248 of 2005(G)

OS.243/2005 of PRL.SUB COURT,KOTTAYAM
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PETITIONER:

P.I.CHERIAN, KOSAMATTOM HOUSE,
NATTACHERRY KARA, VIJAYAPURAM VILLAGE,
KOTTAYAM DISTRICT.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS:
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1. **M.P.KUNJU, S/O.AHAMMED KUNJU,**
   KANIYAMKULAM HOUSE, CHALUKUNNU KARA,
   DO. VILLAGE, KOTTAYAM TALUK.

2. **JAMEELA BEEVI, W/O.M.P.KUNJU,**
   IN DO. DO.

BY ADV. SRI.P.RAVINDRA BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.33248/2005 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE REPORT SUBMITTED BY ADVOCATE COMMISSIONER IN I.A.NO.1437 OF 2005 IN O.S.243/2005, SUB COURT, KOTTAYAM DTD. 17/06/2005.**

EXT.P2: **COPY OF THE COMMISSION REPORT IN O.S.243/05, SUB COURT, KOTTAYAM DTD. 1/07/2005.**

EXT.P3: **COPY OF I.A.NO.1673 OF 2005 IN O.S.NO.243/2005, SUB COURT, KOTTAYAM DTD. 13/07/2005.**

EXT.P4: **COPY OF THE OBJECTION TO I.A.NO.1673 OF 2005 FILED BY THE RESPONDENTS DTD. 3/08/2005.**

EXT.P5: **COPY OF THE ORDER IN I.A.NO.1673 OF 2005 IN O.S.NO.243/2005, SUB COURT, KOTTAYAM DTD.9/11/2005.**

RESPONDENT'S EXHIBIT:

EXT.R1-1: **REPLY NOTICE SENT BY RESPONDENTS DTD. 31/05/05.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 33248 OF 2005

Dated this the 6th day of August, 2007

JUDGMENT

The plaintiff, in a suit for recovery of amounts and for injunction restraining forcible eviction from a shop room, has filed this Writ Petition under Article 227 challenging Ext.P5 order dismissing an application filed by him for a direction to the respondents who are landlords of the shop room to surrender the key of the building before the court and to hand over the same to the plaintiff. According to the plaintiff, the tenant of the shop room had entered into an agreement with him with the concurrence of the landlords and he was conducting business therein pursuant to that agreement. The suit was instituted alleging that the respondents, landlords attempted to forcefully evict him. The plaintiff's case was that from 26.08.04 he commenced business by name Popular Consultancy in the shop room and that he had started paying rent and service charges to the landlords, defendants 1 & 2, who used to issue receipts in the name of the tenant, defendant No.3, assuring him that once the period of the original lease transaction is over, receipts will be issued in his own name. Upon expiry of the original period of lease, the petitioner approached the landlords for renewal in his name, but they evaded the issue. They, however, assured him that if the original receipt which had been issued by them to the 3rd defendant, tenant, is

handed over, the sum of Rs.1,00,000/- which he had paid to the 3rd defendant, will be returned to him. Since it was noticed that defendants 1 and 2 were not keeping their words plaintiff issued lawyer's notice on 24.05.05 which was replied by them on 31.05.05 denying the transaction. It was apprehending disruption of business and forcible dispossession and seeking security amount and other amounts totaling Rs.1,15,000/- that the suit was filed. There was a prayer for injunction restraining forcible eviction along with the suit. On an application filed by the plaintiff, the court granted temporary injunction restraining defendants 1 and 2, the respondents, from forcibly dispossessing him or locking the shop room or disrupting possession or business of the plaintiff until the amounts are paid off. An advocate commissioner was appointed as per IA No.1437 of 2005 and she has filed Ext.P1 report on the basis of the inspection conducted on 16.06.05. The report is to the effect that the advocate commissioner, a lady, was threatened by the defendants and a gang of more than 35 persons who had flocked in the premises at their behest and that the room could not be entered into. Later, police assistance was afforded to the advocate commissioner on the basis of another application and a further report Ext.P2, dt.01.07.05 was filed. Ext.P2 indicated that the shop room was the business premises of the plaintiff. Since the defendants poured lead into the key

hole of the external door, in spite of the injunction order, the internal door could not be opened by the plaintiff and it was under those circumstances that the plaintiff filed Ext.P3 IA for a direction to the respondents for surrender of the key and for handing over the same. Ext.P4 is copy of the objections and it is admitted therein that key of the premises was with the plaintiff. Ext.P4 IA, however, was dismissed by the learned Munsiff and it is challenging Ext.P5 on various grounds that this Writ Petition has been filed seeking inter alia the following reliefs:

> i) set aside Ext.P5 order in IA No.1673 of 2005 in OS No.243 of 2005 from the Subordinate Judge's court of Kottayam in exercise of the supervisory jurisdiction of this Hon'ble Court;
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> ii) pass an order allowing Ext.P3 application IA No.1673 of 2005 in OS No.243 of 2005, on the file of the Subordinate Judge's Court of Kottayam;
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> iii) pass an interim order restraining the respondents from handing over the key of the premises scheduled to the plaint in OS No.243 of 2005, on the file of the Subordinate Judge's Court of Kottayam, pending disposal of this Writ Petition;
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> iv) grant the petitioner such other appropriate reliefs that this Hon'ble Court may deem fit to grant on the facts and in the circumstances of the case and that the petitioner prays from time to time during the pendency of this Writ Petition.

2. A counter affidavit has been filed by the 1st respondent denying the petitioner's averments and refuting the grounds raised. Ext.R1

produced along with the counter affidavit is copy of the reply notice dt.31.05.05 which had been issued at the instance of the respondents. It is alleged that the petitioner is a money lender carrying out business of money lending since decades at Kottayam. He conducts chitty business also. He wanted to use strong arm tactics against respondents so as to illegally extract money from them alleging that the amounts due to him from the former tenant. The suit was filed by him suppressing material facts and the petitioner was able to obtain the ex-parte order of injunction. The petitioner wanted to tress pass into the room under the cover of the injunction order and the urgent commission order, the petitioner and his henchmen along with hired goondas made an attempt to trespass during the commissioner's visit. The attempts of the petitioner to tress pass and to reduce the room into his possession was thwarted by the timely intervention of the respondents and the other tenants at the shopping complex. It is alleged that the scenes during visit and alleged threats to the commissioner was in fact made by the henchmen of the petitioner with a view to make a commotion and to trespass into the room. Petitioner's men had in fact damaged the locks by pouring lead into it so as to prevent these respondents from opening the locks by using the keys which were in the possession of these respondents. The attempt of the petitioner and his henchmen was to

break away the existing lock and lock the room using a lock belonging to them and then get it inspected by the commissioner with a view to create false evidence to the effect that the room was in their possession. The respondents would only prevent the above attempts. The keys of the room were handed over to the commissioner during inspection and the commissioner could not open the rooms because the lock was damaged at the behest of the petitioner himself. It is contended in the counter affidavit that the key of the inner room was allegedly obtained or clandestinely made without the knowledge and consent of the respondents and the tenant the 3rd respondent. The 3rd respondent surrendered possession of the room to respondents 1 and 2 on 13.06.05 and sought time for shifting his articles kept in the inner room(papers and such articles). It is more seriously contended that the petitioner was never in lawful possession of the room and hence is not entitled to possession pending suit.

3. I have heard the submissions of Sri.P.B. Krishnan, learned counsel for the petitioner and those of Sri.P.Ravindra Babu, learned counsel for the respondents. Both counsel would address me at length on the basis of the rival pleadings and documents placed on record. Sri.Krishnan would place strong reliance on the judgment of the Supreme Court in **Rame Gowda v. M.Varadappa Naidu** [(2004) 1 SCC

769]. Sri.Krishnan would place before me a copy of the agreement dt.25.03.04 executed between the 3rd defendant, tenant and the petitioner in respect of the shop room.

4. The ratio emerging from the judgment of the Supreme Court in Rame Gowda's case had occupied a settled possession is not liable to be dispossessed unless it be by recourse to law. Settled possession gives right to possession such that even the rightful owner may only recover it by taking recourse to law. The following passage from **Rame Gowda** (supra) can be quoted profitably:

> "8. It is thus clear that so far as the Indian Law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful onwer shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner(of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful

settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession on the trespasser, just entered into would not be called as one acquiesced to by the true owner."

5. Having considered the pleadings and the materials placed on record, I have no difficulty to find that the petitioner was in settled and peaceful possession of the shop room in question. The principles laid down by the Supreme Court in **Rame Gowda's**(supra) case have to be followed. Following those principles, I set aside Ext.P5 and allow IA No.1673 of 2005.

The Writ Petition is allowed as above.

PIUS C. KURIAKOSE, JUDGE

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